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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,930	05/30/2001	Blake J. Roessler	UM-06192	7740
23535	7590	10/17/2003	EXAMINER	
MEDLEN & CARROLL, LLP 101 HOWARD STREET SUITE 350 SAN FRANCISCO, CA 94105			EPPS FORD, JANET L	
			ART UNIT	PAPER NUMBER
			1635	

DATE MAILED: 10/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/867,930	Applicant(s) ROESSLER ET AL.	
	Examiner Janet L. Epps-Ford, Ph.D.	Art Unit 1635	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

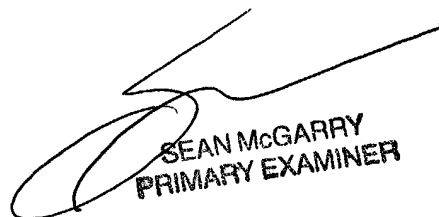
Claim(s) objected to: _____.

Claim(s) rejected: 1-4 and 6-13 remain rejected for the reasons of record.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 9-15-03.
10. ☐ Other: _____

Continuation of 2. NOTE: Applicant's amendment would necessitate a new rejection of claims 1, 4, and 6-13 under 35 USC 103(a) over Kunz et al. in view of Derderent et al. Applicants traversed the rejection of claims 2-3 under 35 USC 103(a) on the grounds that the instant claims as amended are in condition for allowance since the obviousness rejection is not valid because the disclosures of Kunz et al. and Derderen et al. conflict each other. According to Applicants, the examples of Kunz et al. provide only composition comprising wherein the high HLB surfactant is present in a greater amount than the low HLB surfactant. However, Applicants have not taken into account the presence of the corn oil in these examples. Corn oil has an HLB value of 8 (See US Patent No. 6,526,675, col. 7, lines 45-47). Therefore Applicant's calculations of the HLB ratios in the examples of Kunz et al., set forth on page 6 of the response filed 9-15-03, are incorrect. According to Kunz et al. a high HLB refers to HLB values of 10 or greater, and low HLB values refers to values of 8 or less. Applicant's arguments do not take the place of evidence that it would have been obvious to one of ordinary skill in the art at the invention was made, to modify the teachings of Kunz et al. with the teachings of Derderen et al. to make the compositions of the present invention having a ratio of at least 2:1 of low HLB to high HLB surfactant.



SEAN MCGARRY
PRIMARY EXAMINER